

# POLICE AND FIRE RETIREMENT PLAN

## Minutes of the Board Meeting

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**September 3, 2009**

### CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:37 a.m., on Thursday, September 3, 2009, in regular session at Department of Retirement Services, 1737 N. First St, Suite 600 - San Jose, CA.

### ROLL CALL

#### Present:

**DAVID BACIGALUPI**

**CONRAD TAYLOR**

**BILL BRILL**

**KEITH KEESLING**

**ROSE HERRERA**

**SAM LICCARDO**

**Scott Johnson**

**CHAIR**

**VICE CHAIR**

**Trustee**

**Trustee**

**Trustee (Arrived 8:57 a.m.)**

**Trustee**

**Trustee**

### ALSO PRESENT:

**Russell Crosby**

**-SECRETARY**

Donna Busse

-Staff

Carmen Racy-Choy

-Staff

Mollie Dent

-City Attorney Office

Russell Richeda

-Saltzman & Johnson

Randy Sekany

-L230

Debbi Warkentin

-Staff

Thomas J. Boyle

-Attorney

Tamasha Johnson

-Staff

Toni Johnson

-Staff

Jesselle Holcomb

-Staff

Christopher Platten

-Attorney

Rhonda Snyder

-Staff

Maria Loera

-Staff

Antonio Guerra

-Mayor's Office

Jack Farmer

-Retired SJP

Ali Amiry

-Staff

Steve Gracie

-SJP

Jim Jeffers

-Attorney

James Aguiral

-SJP

Veronica Niebla

-Staff

Aracely Rodriguez

-OER

Ceara O'Fallon

-Staff

Karin Carmichael

-Staff

Lt. Mark Bustillos

-SJP

Sam Swift

-Attorney

Ron Kumar

-Staff

Amanda Ramos

-Staff

## REGULAR SESSION

### ORDERS OF THE DAY

**Chair Bacigalupi** called the meeting to order at 8:37 a.m. He stated Item 2a – application of Steven J. Gracie, applicant has requested this matter to be continued.

### RETIREMENTS

#### 1. Service

- a. **William L. Dudding, Jr.**, Police Officer, Police Department. Request for Service Retirement effective September 19, 2009; 29.26 years of service.

(M.S.C. Brill/Taylor to approve. Motion carried 6-0-1. (Absent: Herrera)

- b. **Stephen R. Windisch**, Sergeant, Police Department. Request for Service Retirement effective September 19, 2009; 30.02 years of service.

(M.S.C. Brill/Taylor to approve. Motion carried 6-0-1.

- c. **Bruce M. Wiley**, Sergeant, Police Department. Request for Service Retirement effective September 19, 2009; 28.97 years of service.

(M.S.C. Brill/Taylor to approve. Motion carried 6-0-1.

**2. Disabilities – Item was deferred...None**

**3. Change in Status**

- a. Jack Farmer, Retired Police Captain. Request for change to a Service Connected Disability Retirement effective January 13, 2007; 30.03 years of service.

For the record **retired Police Captain Farmer** was present and was represented by *Mr. Swift*. The following reports have been received:

<b>MEDICAL REPORTS – DR’S NAME</b>	<b>DATED</b>
1. ALAN KAISLER-MEZA, M.D.	4/23/09 (X6), 5/10/08 (X2), 12/18/07, 1/26/04, 9/9/03
2. RONALD FUJIMOTO, D.O.	9/10/07, 10/4/06
3. JEFFREY HARTMAN, D.C.	10/17/05, 12/17/03
4. HARJIT SEKHON, M.D.	2/10/04
5. LAVANYA KAILAR, M.D.	1/17/03
6. RANDALL SEAGO, M.D.	3/18/91, 2/8/91
7. MURRAY SOLOMON, M.D.	3/7/91
8. JOHN MCCUE, M.D.	1/4/88

<b>MEDICAL REPORT FROM BOARD’S DIRECTOR</b>	<b>DATED</b>
RAJIV DAS, M.D.	08/7/09

*Dr. Das* stated the applicant has significant back symptoms. The restrictions provided are consistent with the findings. He stated the on-going treatment for maximum medical improvement (MMI) is presumably for the relief of periodic flare-ups. That means the treatment he receives would improve him back to his baseline functionability, which is not to be confused with full functionability prior to injury.

*Mr. Jeffers* clarified that at the time of Captain Farmer’s separation he was on modified duty of five hours a day.

(M.S.C. Liccardo/Brill) to approve. Motion carried 6-0-1.

**4. Deferred Vested - None**

**DEATH NOTIFICATIONS**

- 5. **Notification of the death of Donald Black, Retired Sergeant; retired 3/3/01; died 6/5/09. Survivorship benefits to Betty M. Black, spouse.**

*This item is note and file.*

**NEW BUSINESS**

- 6. **Request for Board direction regarding Fair Labor Standards Act (FLSA) payroll issue.**

**Member Johnson** recused himself from this discussion as a Board member, as he would be speaking as the Finance Director.

*Mrs. Niebla* stated the staff memo outlines the issue that was brought to the Board last month regarding pensionable earnings. Provided is a chronological timeline of the FLSA events, and the supporting documentation for the various communications between departments.

*Mr. Johnson* stated he wanted to acknowledge and thank staff for the hard work they had done. He said this is a big issue and many employees are affected. The issue began around 1999, when a new payroll system was implemented, and the FLSA provision was not communicated to all IT/Finance/and other participants involved at that time. Since then, two additional major upgrades have occurred with continued unawareness. There has been a considerable amount of time spent with staff and other departments providing discussion and analysis for a solution.

**Member Herrera arrived**

*Mr. Johnson* continued that there has been collaboration with the Fire Department to keep track of pensionable and non-pensionable hours. Data has been extracted from payroll. The Finance Department still needs to receive the contribution rates for the COLA from DRS.

*Mrs. Niebla* stated the timeline will show that Finance requested the COLA information on 7/30. The information they have does not split out the pension and COLA. Currently, staff will work through the aggregate numbers. Additionally, she added staff needs to access Finance's database to confirm accuracy of the numbers.

*Mr. Johnson* stated this issue needs to be resolved quickly. Due to confidentiality, he does not feel comfortable providing the database to staff; however he will provide access to the database. He added the problem has been corrected going forward, and pay stubs now show the breakdown for pensionable earnings.

*Mr. Sekany* asked if this FLSA issue began 10 years ago, but FLSA has been apart of payroll since the 1980's, are the initial records available, and will that be a part of this review? He asked how do we know that this has not been an issue since the inception of FLSA because many of his retirees have confirmed getting a larger pension by working additional overtime hours months before retiring. He would like the Board to consider going back further in their research of this matter. He requested the Board confirm that there would be no changes to the past benefit recipient's checks until the entire FLSA issue has been resolved and the affected people identified.

**Chair Bacigalupi** stated no person's pensions will be affected until FLSA is resolved. He added that the City Manager stated she was willing to work with the Board to resolve this matter, so he wants this to continue moving forward. Staff to continue working with the Fire Department; after this time period issue is resolved, then go back to 1980's when FLSA commenced to sample data for accuracy.

**7. Request for Board direction on staff recommendation to issue RFP for tax counsel.**

*Ms. Dent* stated this pertains to prior discussions with the Board in obtaining a determination letter from the IRS for the Plan. The filing date is January 2011.

**Chair Bacigalupi** stated the Board should perform their own RFP.

(M.S.C. Herrera/Brill) to approve. Motion carried 7-0-0.

**8. Request for discussion on Board's request for Attorney General Opinion on use of personal communication devices as it relates to the Public Records Act.**

*Ms. Dent* stated a request for Attorney General's opinion must come from a legislator. Also, the Attorney General's Office will reject a request if the matter is in litigation, and this is in litigation with the City. She stated she can provide a memo to the Board on any existing litigation related to this matter.

**Chair Bacigalupi** stated as a Board member in a volunteer capacity, he was unsure if his personal phone would be subject to the Public Records Act (PRA) as a result of his position. The Board must be provided devices, if they are to segregate personal function from business ones.

**Member Herrera** stated her stance is that any device that is used to conduct business should be open. There is an ethical standard that one is held accountable to.

**Member Liccardo** stated he had recently been subject to a PRA request. The request was relevant in terms of his position as a Council member, and the premise was that during a meeting he could be receiving texts/emails with information to sway the voting one way or another. He added that some cell phone providers can provide two separate lines for the same device for business and personal use segregation.

*Mr. Richeda* suggested it is reasonable to provide to the Board the costs associated with separate devices, additional lines, or any other available options.

## **OLD BUSINESS/CONTINUED-DEFERRED ITEMS**

### **9. Report on information/documents requested by Securities & Exchange Commission.**

*This item is note and file.*

### **10. Discussion on letter dated July 24, 2009 from Christopher Platten, Local 230's attorney, concerning questions on retiree medical contribution rates.**

*Mr. Platten* stated he presented a letter to the Board at a previous Board meeting regarding analysis of the Segal document concerning the POA and City benefits, and at the Chair's suggestion he sent a follow-up letter to Retirement staff; which he has not heard a response from yet.

*Mrs. Racy-Choy* stated several questions posed in Mr. Platten's letter need to be directed to the City; however she will address questions 1, 5, 6, and 7. To expand on Q1 pertaining to the implicit subsidy, currently the City and the active plan participants pay the implicit subsidy. For purposes of setting the health contribution, the bargaining parties have told the Board to exclude implicit subsidy. Q5 pertained to pre-funding of retiree health care benefits and the requirements of GASB. Under GASB, if employees agree to prefund, it will change the employer's expense and liability partly due to a higher interest rate that could be assumed, and partly because the way the GASB standard is written as it relates to the Annual Required Contribution (ARC). Staff did not have information for other plans. Q6 related to the assumed rate of investment return Segal used in its projections. For the projections the 10-year funding method was used, and new scenarios containing a 7.5% assumed interest rate of return, so each scenario could build on the other to show the impact. Segal will review the assumed rate of investment return and the same rate will be used for both, pension and health. The Board under the advice of the actuary controls the setting of the interest rate, which is currently at 8.0% and under review. Q7 addresses the role of the Board in interpreting agreements between the Bargaining parties. The Board has a role in administering the agreement and if there is a need for clarification the Board would ask the bargaining parties what the intent of the agreement was.

*Ms. Rodriguez* stated the City is currently in negotiations with Local 230, so any additional concerns can be addressed at that time.

### **11. Oral update on Travel Audit compliance.**

*Mrs. Niebla* stated there were still a few items outstanding, which were going to be discussed at the Audit Committee; however a separate committee was established and will take up these issues. The new sub-committee assignments have been made and a meeting is in the process of being scheduled.

**Chair Bacigalupi** stated that during the year-end fiscal audit no major issues or internal control problems were found in the Plan. He congratulated staff.

## **STANDING COMMITTEES / REPORTS / RECOMMENDATIONS**

**Investments Committee (Johnson, Bacigalupi, Keesling – Alternate: Liccardo)**

### **12. Summary of meeting held 16 July 2009.**

*This item is note and file.*

**Real Estate Committee (Bacigalupi, Keesling, Taylor – Alternate: Herrera)**

**Audit Committee (Taylor, Brill, Johnson – Alternate: Bacigalupi)**

## **CONSENT CALENDAR (Items 13-20)**

**Chair Bacigalupi** pulled Items 13, and **Member Keesling** pulled Item 15.

(M.S.C. Herrera/Brill) to approve Consent Calendar with the exception of Items 13 and 15. Motion carried 7-0-0

### **13. Approval of Minutes**

Monthly meeting held 6 August 2009.

**Chair Bacigalupi** stated changes to trustee arrival times, and typo's needed correction. He requested this item to be continued to the next meeting.

### **15. Approval of Monthly Expenses**

Report of P&F Retirement Plan administrative expenses for May 2009

It was noted that the expenses were actually for the month of June not May.

(M.S.C. Brill/Herrera) to approve. Motion carried 7-0-0.

## **PUBLIC COMMENTS**

*Mr. Swift* stated he wanted to inquire about the discussion on Dr. Das' forms/fees since it has not been agendized recently. He feels that it is important to move this issue forward.

*Mrs. Busse* stated staffing levels have been minimal so this item has been on hold due to higher priority matters needing attention.

## **PROPOSED AGENDA ITEMS**

**Chair Bacigalupi** would like to agendize the following items:

1. Das' forms/fees

## **EDUCATION AND TRAINING**

**Chair Bacigalupi** stated he received the IFEBP conference material and would like the Board to be informed of that opportunity.

## **ADJOURNMENT**

There being no further business, **Chair Bacigalupi** adjourned the meeting at 10:20 a.m.

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**DAVID BACIGALUPI, CHAIR  
BOARD OF ADMINISTRATION**

**ATTEST:**

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**RUSSELL U. CROSBY, SECRETARY  
BOARD OF ADMINISTRATION**